IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2167 of 2002

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NATIONAL INSURANCE CO. - Appellant(s)
Versus
DOSAL LADHA SORA F/O DECD & 3 - Defendant(s)

==========

Appearance :

MR DAKSHESH MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1,
MR KAMLESH B MEHTA for Defendant(s) : 1.2.1,1.2.2
MR BHAVESH N DAVE for Defendant(s) : 1.2.1,1.2.2
NOTICE SERVED for Defendant(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 15/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 On 12.6.2007 this Court passed the following order:

> 1. This appeal was notified for hearing earlier on 09.05.2007. When the Appeal was called out for hearing, learned Advocate Shri Bhavesh Dave appearing for the respondents was absent. In the circumstances, in the interest of justice, hearing had been adjourned to 10.05.2007. Even on 10.05.2007, learned Advocate Shri Dave was absent and, therefore, hearing was adjourned to 11.05.2007. Even on that day, learned Advocate Shri Dave was absent and, therefore, hearing was adjourned to 12.06.2007.
>
> 2. Even today, when the matter is called out, learned Advocate Shri Bhavesh Dave is absent. In the circumstances, in the interest of justice, as a last chance, hearing is adjourned to 15.06.2007. The Appeal shall be peremptorily heard on that day."

Even today none appeared for the respondents. Hence the matter is taken up for hearing today.

2.0 This appeal is directed against the judgement and award dated 15th April 2002 passed by Motor Accident Claims Tribunal (Main), Kutch at Bhuj, in Motor Accident Claim Petition No.435 of 1996, whereby the said claim petition was allowed and a sum of Rs.4,22,000/- was awarded to the claimants along with interest at the rate of 12% per annum from the date of main claim petition till deposit and with proportionate costs of the proceedings.

3.0 The appellant herein is the original respondent no.3, respondent nos.1 and 2 are original claimants and respondent nos.3 and 4 are the original respondent nos.1 and 2 in the aforesaid claim petition. According to original claimants, Kasam alias Ladha Dosal was serving as a cleaner on Truck No.GJ-12-T-7116. On the day of the incident he had gone along with the driver and others to Panandhro Lignite mine to load charcoal. The Driver of the truck was driving the vehicle rashly and negligently as a result of which it toppled down into a ditch and said Kasam sustained injuries on his spinal cord which was broken and he has become completely paraplegic and handicapped. According to claimants, the injure was unable to stand on his leg or move his lower limbs and he was bed-ridden. The claimants therefore filed the aforesaid claim petition claiming compensation in the sum of Rs.20,00,000/- from the original opponents for the injuries sustained by said Kasam. He thereafter died on 25.6.2000. The Tribunal, after hearing the parties, awarded a sum of Rs.4,22,000/- as stated hereinabove which is challenged in the present appeal by the Insurance Company.

4.0 Mr.Dakshesh Mehta, learned Advocate appearing for the appellant Insurance Company, submitted that the claimant has not expired due to the accident happened on 27th October 1995 inasmuch as he has expired only on 25th June 2000. He submitted that

looking to the long gap of about 4 years and 10 months it cannot be said that the claimant has expired due to the accident and there is no nexus between the accident and the cause of death. Mr. Mehta submitted that no independent evidence is led except filing of FIR and Panchnama and therefore in absence of any independent evidence, the issue of negligence cannot be said to have been proved. According to him, as the owner and driver had not appeared, it was not proved that the truck had toppled down into the ditch because of rash and negligent driving of the driver.

5.0 Mr. Mehta further submitted that the Tribunal has failed to appreciate the settled principle of law that where the claimants are parents aged about more than 60 years the multiplier should be of 8 and the Tribunal has wrongly taken the multiplier at 16. He further submitted that the Tribunal has committed an error in awarding Rs.1,00,000/- under the head of pain, shock and suffering when the Tribunal has already awarded Rs.50,000/- as conventional amount. He has also challenged the award of interest at the rate of 12% and submitted that it is on higher side.

6.0 We have heard the learned Advocate for the appellant and perused the relevant record.

7.0 There is no dispute about the accident in question and the injury suffered by the original claimant. From the documents produced on record it is

evident that the deceased was operated and the bills of medicines from 1995 to 2000 were produced on record. From the discharge card it appears that there were bedsores at waist with severe anemia. Document further shows that the deceased was completely bedridden through the period of five years and ultimately he died because of the bedsores and loss of hemoglobin due to the injuries sustained by him in the accident. The evidence of the Medical Officer who treated the original claimant supports the case of claimants. It is, therefore, clear that after the accident the original claimant was bedridden, he had developed bedsore due to his inability to move himself due to the injuries sustained by him in the accident. Therefore the Tribunal has come to the conclusion that the original claimant had died due to the injuries sustained by him in the accident and the nexus between the injuries and the death has been established with satisfaction. Learned Advocate for the appellant is not able to point out anything from the record to prove contrary to the findings arrived at by the Tribunal. We are, therefore, in complete agreement with the aforesaid finding.

8.0 As regards the income of the deceased is concerned, he had claimed that he was earing Rs.2000/- per month. The deceased was serving as a cleaner and in absence of any documentary evidence the Tribunal has taken the income of the deceased at Rs.1500/- which is quite reasonable and does not warrant any interference.

9.0 The deceased met with the accident on 27.10.1995 and died on 25.6.2000. During this period the deceased was not able to move and could not work. Therefore the Tribunal has, after considering the fact that the deceased must be spending considerable amount towards his own expenses and must be contributing to the family consisting of his parents, calculated the actual loss of income at Rs.58000/- by taking Rs.1000/- per month. We do not find any error in award of such amount.

10.0 The Tribunal found that father of the deceased was earning Rs.1000/- per month and he could not have attended to his work during the prolonged treatment. The Tribunal has therefore awarded a sum of Rs.40,000/- for the entire period. Learned counsel for the appellant is unable to point out anything to show that the said amount of compensation is so excessive that interference of this Court is required. We therefore confirm the said amount of award especially in view of the fact that this amount includes the services rendered by the original claimant no.2 who is the mother of the deceased.

11.0 The claimants had stated that they had spent an amount of Rs.60000/- to 70000/- for the treatment. However, the Tribunal has awarded only Rs.25000/- towards medical expenditure including transportation charges. Looking to the prolonged treatment it cannot be said that said amount is on higher side. Likewise

award of Rs.5000/- towards post death rituals is also just and proper.

12.0 The Tribunal has further awarded a sum of Rs.50000/- towards loss of expectation of life as conventional amount. Looking to the particular facts of the case we do not find any reason to interfere with the said award.

13.0 From the evidence on record the Tribunal found that the deceased had to undergo operations and hospitalization and continuous stagnation in the bed for a period of more than four years. He had also suffered bedsores and oozing of pus and he could not do his own daily pursuits without help. The Tribunal has therefore awarded a sum of Rs.1,00,000/- under the head of acute pain, mental agony as well as physical difficulties. However, it is required to be noted that the Tribunal has already awarded a sum of Rs.50,000/- towards loss of expectation of life as conventional amount. Therefore, we are of the opinion that when the Tribunal has already awarded Rs.50,000/- under the head of conventional amount, awarding compensation Rs.1,00,000/- under the head of pain, shock and suffering is on the higher side. Looking to the particular facts of the case, we are of the opinion that an award of Rs.50000/- under the head of pain, shock and suffering would be just and proper.

14.0 As regards future dependency is concerned, the

Tribunal found that at the time of his death the deceased was approximately 31 years and further found that he would have earned approximately Rs.3000/- per month in future. Learned counsel for the appellant cannot controvert this figure of Rs.3000/-. The Tribunal has thereafter taken the average income at Rs.2250/- by taking the mean of two ends and the yearly income would be Rs.27000/-. The Tribunal has taken multiplier of 16. However, the age of the parents were 62 years and 57 years respectively. As per the settled law, we are of the view that looking to the age of parents which is more than 60 years, the multiplier should have been 8 instead of 16. Therefore, the loss of income would be Rs.2,16,000/-. Since the deceased was unmarried, the loss of dependency will have to be worked out by slicing down the aforesaid amount to 1/3rd, which would come to Rs.72000/-. Thus, the claimants would be entitled to an amount of Rs.72000/- under the head of loss of dependency instead of Rs.1,44,000/-.

15.0 The Tribunal has awarded interest at the rate of 12% per annum on the awarded amount. In the case of Kshama Begum and others Vs. The New India Insurance Co., reported in 2000(1) Supreme 5, it is held that “in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in that behalf. Earlier 12% was found to be the reasonable rate of simple interest. With the change in economy and policy of

Reserve Bank of India, the interest rate has been lowered. The nationalized banks are now granting interest @ 9% on fixed deposit for one years. We, therefore, direct that the compensation amount fixed herein before shall bear interest @ 9% per annum from the date of claim made by the applicant". Therefore, looking to the facts of the case, we are of the opinion, interest at the rate of 9% per annum would be just and proper.

16.0 Therefore, the claimants are entitled to the compensation as under:

1.	Actual loss suffered	Rs.58,000.00
2.	Pain, shock and suffering	Rs.50,000.00
3.	Loss of income of father	Rs.40,000.00
4.	Medical expenses	Rs.25,000.00
5.	Post death rituals	Rs. 5,000.00
6.	Loss of dependency	Rs.72,000.00
7.	Conventional amount	Rs.50,000.00

	Total	Rs.3,00,000.00

17.0 Thus, the claimants shall be entitled to a total sum of Rs.3,00,000/- (Rupees three lacs only) along with interest at the rate of 9% per annum from th date of main claim petition till the date of deposit of the amount with proportionate costs of the proceedings. The award of the tribunal is modified to the aforesaid extent. Appeal is allowed to the aforesaid extent. Decree to be drawn accordingly.

[ANIL R. DAVE, J.]

[K.S. JHAVERI, J.]

ar